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California Health and Welfare Trust Fund, et al.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DISTRICT COUNCIL 16 NORTHERN
CALIFORNIA HEALTH AND WELFARE TRUST
FUND, et al.,

Plaintiffs,

v.

USAL PAINTING, LLC, et al.,

Defendants.

Case No.: 19-cv-05071 HSG

**FIRST AMENDED JUDGMENT
PURSUANT TO STIPULATION;
ORDER THEREON**

IT IS HEREBY STIPULATED and AGREED (the “Stipulation”) by and between the parties hereto that a First Amended Stipulated Judgment¹ shall be entered in the within action in favor of Plaintiffs District Council 16 Northern California Health and Welfare Trust Fund, et al. (“Plaintiffs” or “Trust Funds”) and against Defendant Usal Painting, LLC, a Suspended California limited liability company, and Defendant Alexander Ernesto Navarro, an individual and also dba Alexander Ernesto Navarro, (hereinafter collectively referred to as “Defendants”). The Parties have agreed to amend the initial Judgment Pursuant to Stipulation to update the Original Stipulation, include additional amounts owed to Plaintiffs, and credit Defendants for amounts that are no longer due. This document shall, upon

¹ Amending the Stipulated Judgment between the parties entered on November 15, 2019 (Dkt. #17).

1 execution by all parties, supersede the previous Stipulation, and become the operative document
2 between the parties as follows:

3 1. Defendants are signatory to and bound by the terms of a Collective Bargaining
4 Agreement(s) (“Bargaining Agreement”) with the Plaintiff Union (“Union”). The Bargaining Agreement
5 is still in full force and effect.

6 2. Defendant Alexander Ernesto Navarro confirms that he is authorized to enter into this
7 Stipulation on behalf of himself individually and dba Alexander Ernesto Navarro and on behalf of Usal
8 Painting, LLC (Collectively “Defendants”).

9 3. Defendant Alexander Ernesto Navarro (“Guarantor”) also confirms that he is personally
10 guaranteeing the amounts due herein. Defendants specifically consent to the Court’s jurisdiction, as well
11 as the use of a Magistrate Judge for all proceedings, including entry of judgment herein. Defendants
12 further confirm that all successors in interest, assignees, and affiliated entities (including, but not limited
13 to, parent or other controlling companies), and any companies with which any Defendant joins or
14 merges, if any, shall also be bound by the terms of this Stipulation as Guarantors. This shall include any
15 additional entities in which Defendant/Guarantor Alexander Ernesto Navarro is an officer, owner or
16 possesses any controlling ownership interest. All such entities shall specifically consent to the Court’s
17 jurisdiction, the use of a Magistrate Judge for all proceedings, and all other terms herein, in writing, at
18 the time of any assignment, affiliation or purchase.

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4. Defendants are currently indebted to the Trust Funds as follows:

Work Month	Unpaid Contributions	20% Liquidated Damages	5% Interest (through 8/19/20 or date of payment)	Subtotals
May 2018	\$0.00	\$150.00	\$16.11	\$166.11
June 2018	\$0.00	\$510.45	\$172.94	\$683.39
July 2018	\$0.00	\$313.91	\$110.25	\$424.16
August 2018	\$0.00	\$387.44	\$143.16	\$530.60
September 2018	\$212.75	\$192.30	\$76.79	\$482.61
Subtotals:	\$212.75	\$1,554.10	\$520.02	\$2,286.87
Attorneys' Fees (1/10/19 through 7/31/20):				\$6,509.50
Costs (1/10/19 through 7/31/20):				\$788.53
Subtotal (Attorney's Fees and Costs):				\$7,298.03
Credit (Check No. 1586) ² :				(\$1,000.00)
TOTAL JUDGMENT:				\$8,584.90

REQUIREMENTS UNDER THE TERMS OF THIS STIPULATION

5. **Notice requirements** pursuant to the terms of this Stipulation are as follows:

- a) Notices to Defendants: Alexander Ernesto Navarro, 197 Precita Ave, San Francisco, CA 94110; email: alxnavarro11@gmail.com.
- b) Notices to Plaintiffs: Michele R. Stafford, Saltzman & Johnson Law Corporation, 1141 Harbor Bay Parkway, Suite 100, Alameda, CA 94502; email: mstafford@sjlawcorp.com, copy to compliance@sjlawcorp.com.

6. The requirements pursuant to the terms of this Stipulation are as follows:

a) **Monthly Payments**: Defendants shall conditionally pay the amount of \$7,030.80, representing all of the above amounts, less liquidated damages in the amount of \$1,554.10.

i) Payments in the amount of **\$605.00 per month** shall begin on September 15, 2020, and continue on or before the 15th (fifteenth) day of each month thereafter **for a period of twelve (12) months**. Plaintiffs may require that Defendants pay electronically by ACH/wire transfer, or by cashier's check.

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² Defendant recently submitted Check No. 1586, which will be applied to September 2018 contributions, interest incurred for the months of May 2018 through September 2018, and partial attorneys' fees upon bank clearance of that check. Should this check not clear the bank, the \$1,000.00 will be added back to the Stipulated Judgment and will remain due.

1 ii) Defendants shall have the right to increase the monthly payments at any
2 time and there is no penalty for prepayment.

3 iii) Payments shall be applied first to interest, at the rate of 5% per annum in
4 accordance with the Bargaining Agreement(s) and Trust Agreements. Interest shall begin to accrue on
5 August 20, 2020.

6 b) **Contributions**: Beginning with contributions due for hours worked by
7 Defendants' employees during the month of July 2020, and for every month thereafter until this
8 Judgment is satisfied, Defendants shall remain current in reporting and payment of contributions due to
9 Plaintiffs under the terms of the Collective Bargaining Agreement(s). Defendants are required to enroll
10 in iRemit, the online platform for reporting and payment of contributions to the Plaintiff Trust Funds
11 and to submit all monthly contribution reports and payments electronically through iRemit. Defendants
12 are to contact DC16iremit@hsba.com to set up online reporting and payment.

13 c) **Job Report**: Beginning with the month of August 2020, and for every month
14 thereafter, Defendants shall fully disclose all jobs on which they are working by providing Plaintiffs
15 with fully completed job reports on the form attached hereto as *Exhibit A*. Upon request by Plaintiffs,
16 Defendants shall also provide Plaintiffs with copies of Certified Payroll Reports.

17 d) **Audit**: Should the Trust Funds request an audit of Defendants' payroll records
18 pursuant to the requirements of the Bargaining Agreement(s) and/or Trust Agreements, Defendants must
19 contact the auditor within seven days of receiving notice, and must schedule the audit.

20 i) In the event that amounts are found due to Plaintiffs as a result of the
21 audit, Plaintiffs shall send a copy of the audit report and written demand for payment to Defendants. In
22 the event that the audit findings are not contested, payment in full shall be delivered to Michele R.
23 Stafford at the address provided above.

24 ii) In the event that Defendants dispute the audit findings, Defendants must
25 provide the dispute in writing, with all supporting documentation, within ten days of the date of the
26 demand. Defendants shall be notified as to whether revisions will be made to the audit. If revisions are
27 not made, payment will be immediately due. If revisions are made, payment in full of the revised
28 amount shall be immediately due.

iii) If Defendants are unable to make payment in full, Defendants may submit a request to add the amounts found due to this First Amended Stipulation. If the Stipulation is so revised, Defendants shall execute the Amended Judgment or Amendment to Judgment within ten days of receipt. Failure to execute the revised agreement shall constitute a default of the terms herein.

iv) Failure by Defendants to submit either payment in full or a request to add the amounts due to this Judgment within ten days of receipt shall constitute a default of the obligations under this agreement. All amounts found due on audit shall immediately become part of this Judgment.

e) **Fees:** Defendants shall pay all additional attorneys' fees and costs incurred through Satisfaction of Judgment, whether or not a default occurs.

7. In summary, Defendants shall deliver the following payments and documents to Plaintiffs, at the following locations, on or before the following delivery deadlines, until this First Amended Stipulation has been fully satisfied:

<u>Required Submissions</u>	<u>Delivery deadlines³</u>	<u>Delivery locations</u>
Stipulated payments in the amount of \$605.00 payable to <i>District Council 16 Northern California Trust Funds</i>	15 th day of each month (9/15/20-8/15/21)	Michele R. Stafford Saltzman & Johnson Law Corp. 1141 Harbor Bay Parkway, #100 Alameda, CA 94502
Current contribution reports and payments payable to <i>District Council 16 Northern California Trust Funds</i>	15 th day of each month (beginning 9/15/20, for 8/20 hours)	Electronically via iRemit Plus copies to: compliance@sjlawcorp.com (subject: "Usal Painting");
Completed job reports (form attached as Exhibit A to Stipulation) and Certified Payroll (if requested)	15 th day of each month (beginning 9/15/20, for 8/20 hours)	compliance@sjlawcorp.com (subject: "Usal Painting") or Michele R. Stafford Saltzman & Johnson Law Corp. 1141 Harbor Bay Parkway, #100 Alameda, CA 94502

8. Failure to comply with any of the above terms, including submitting a payment that does not clear the bank, or failing to endorse a joint check provided for the payment of amounts due under the terms of this Stipulation including current contributions, shall constitute a default of the obligations

³ If the Stipulation has not been fully satisfied 8/15/21, all monthly submission requirements shall continue until all amounts have been paid and a Satisfaction of Judgment has been filed with the Court.

1 under this Stipulation.

2 **DEFAULTS UNDER THE TERMS OF THIS STIPULATION**

3 9. If default occurs, Plaintiffs shall make a written demand to Defendants to cure said
4 default *within seven (7) days of the date of the notice from Plaintiffs*. In the event default is not cured
5 within the required time frame, all amounts remaining due hereunder (after application of principal
6 payments made, if any) shall be due and payable on demand by Plaintiffs. These amounts shall include
7 any conditionally waived liquidated damages, and additional attorney's fees and costs incurred herein.

8 10. Any unpaid or late-paid contributions, together with 20% liquidated damages and 5% per
9 annum interest, shall become part of this Judgment. Plaintiffs reserve all rights available to collect any
10 contributions and related amounts not included herein. This includes, but is not limited to, any amounts
11 due pursuant to employee timecards or paystubs, by audit, or other means. Should Defendants fail to
12 submit a report for any month, contributions shall be estimated pursuant to Trust Fund policy.
13 Defendants specifically waive the defense of the doctrine *res judicata* as to any such additional amounts
14 determined as due.

15 11. A Writ of Execution may be obtained without further notice, in the amount of the unpaid
16 balance plus any additional amounts due under the terms herein. Such Writ of Execution may be
17 obtained solely upon declaration by a duly authorized representative of Plaintiffs setting forth the
18 balance due as of the date of default.

19 **MISCELLANEOUS PROVISIONS**

20 12. The above requirements remain in full force and effect regardless of whether or not
21 Defendants have ongoing work, whether Defendants' account with the Trust Funds is active, or whether
22 Defendants are signatory to a Collective Bargaining Agreement with the Union. If, for any reason,
23 Defendants have no work to report during a given month, Defendants shall submit the job report form
24 (Exhibit A attached hereto) indicating that there are no current jobs. If Defendants have no contributions
25 to report, Defendants shall submit the applicable contribution report stating "no employees."

26 13. Payments made by joint check shall be endorsed on behalf of Defendants prior to
27 submission, and may be applied toward Defendants' monthly stipulated payment, provided that the
28 issuer of the joint check is not requesting a release in exchange for the payment. Joint checks for which a

1 release is requested may not be applied toward Defendants' monthly stipulated payment, but shall be
2 deducted from the total balance owed under this Stipulation, provided the payment is for contributions
3 included in this Stipulation.

4 14. Prior to the last payment pursuant to this First Amended Stipulation, Plaintiffs shall
5 advise Defendants as to the final amount due, including additional interest, any current contributions and
6 related amounts, and all additional attorneys' fees and costs incurred by Plaintiffs, whether or not
7 Defendants default herein. Any additional amounts due shall be paid in full with the final stipulated
8 payment due on August 15, 2021.

9 15. The conditional waiver of liquidated damages shall be presented to the Board of Trustees
10 for consideration only after all amounts due under the terms of this First Amended Stipulation are paid
11 in full, and Defendants' account is otherwise current. If the waiver is granted, a Satisfaction of Judgment
12 will be filed with the Court once all payments have cleared the bank. If the waiver is not granted, the
13 liquidated damages will be immediately due. The waiver may be granted with further conditions, such as
14 paying timely and remaining current for an additional period of time.

15 16. Defendants waive any notice of Entry of Judgment or of any Request for a Writ of
16 Execution, and expressly waive all rights to stay of execution and appeal.

17 17. Any failure on the part of Plaintiffs to take any action as provided herein in the event of
18 any breach of the provisions of this First Amended Stipulation shall not be deemed a waiver of any
19 subsequent breach.

20 18. The parties agree that any payments made pursuant to the terms of this First Amended
21 Judgment shall be deemed to have been made in the ordinary course of business as provided under 11
22 U.S.C. Section 547(c)(2) and shall not be claimed by Defendants as a preference under 11 U.S.C.
23 Section 547 or otherwise.

24 19. Should any provisions of this First Amended Stipulation be declared or determined by
25 any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and
26 enforceability of the remaining parts, terms or provisions shall not be affected thereby and said illegal,
27 unenforceable or invalid part, term, or provisions shall be deemed not to be part of this Stipulation.

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1 20. This First Amended Stipulation is limited to the agreement between the parties with
2 respect to the unpaid and delinquent contributions and related sums enumerated herein, owed by
3 Defendants to Plaintiffs. This Stipulation does not in any manner relate to withdrawal liability claims, if
4 any. Defendants acknowledge that Plaintiffs expressly reserve their right to pursue withdrawal liability
5 claims, if any, against Defendants and control group members, as provided by Plaintiffs' Plan
6 documents, Trust Agreements incorporated into their Bargaining Agreements, and applicable laws and
7 regulations.

8 21. This First Amended Stipulation contains all of the terms agreed to by the parties and no
9 other agreements have been made. Any changes to this Stipulation shall be effective only if made in
10 writing and signed by all parties hereto.

11 22. This First Amended Stipulation may be executed in any number of counterparts and by
12 facsimile, each of which shall be deemed an original and all of which shall constitute the same
13 instrument.

14 23. Defendants represent and warrant that they have had the opportunity to be or have been
15 represented by counsel of their own choosing in connection with entering this First Amended Stipulation
16 under the terms and conditions set forth herein, that they have read this First Amended Stipulation with
17 care and are fully aware of and represent that they enter into this First Amended Stipulation voluntarily
18 and without duress.

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24. The parties agree that the Court shall retain jurisdiction of this matter until this First Amended Stipulated Judgment is satisfied.

DATED: November 4, 2020

USAL PAINTING, LLC.

By: /S/
Alexander Ernesto Navarro

DATED: November 4, 2020

ALEXANDER ERNESTO NAVARRO

By: /S/
Alexander Ernesto Navarro, individual Defendant
and Guarantor, also dba Alexander Ernesto
Navarro

DATED: November 10, 2020

**DISTRICT COUNCIL 16 NORTHERN
CALIFORNIA HEALTH AND WELFARE
TRUST FUND, et al.**

By: /S/
Robert Williams
Trustee of Plaintiff Trust Funds

DATED: November 10, 2020

**DISTRICT COUNCIL 16 NORTHERN
CALIFORNIA HEALTH AND WELFARE
TRUST FUND, et al.**

By: /S/
Jeannie Simpelo
Trustee of Plaintiff Trust Funds

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the calendar in this matter is vacated, and that the Court shall retain jurisdiction over this matter.

DATED: November ____, 2020

UNITED STATES DISTRICT JUDGE

Exhibit A: JOB REPORT FORM**Completed Forms Due by the last business day of each month**

by email to compliance@sjlawcorp.com (subject line: *Usal Painting*), or
delivered to Saltzman & Johnson, 1141 Harbor Bay Parkway, Ste. 100, Alameda, CA 94502

Employer: Usal Painting, LLC

Report for the month of _____, 20__ Submitted by: _____

Project Name:		Public or Private? (Circle one)
Project Address:		
General Contractor:		
General Contractor Address:		
General Contractor Phone #:	Project Manager Name:	
Project Manager Phone #:	Project Manager email address:	
Contract #:	Contract Date:	
Total Contract Value:		
Work Start Date:	Work Completion Date:	
Project Bond #:	Surety:	

Project Name:		Public or Private? (Circle one)
Project Address:		
General Contractor:		
General Contractor Address:		
General Contractor Phone #:	Project Manager Name:	
Project Manager Phone #:	Project Manager email address:	
Contract #:	Contract Date:	
Total Contract Value:		
Work Start Date:	Work Completion Date:	
Project Bond #:	Surety:	

*****Attach additional sheets as necessary****

24. The parties agree that the Court shall retain jurisdiction of this matter until this First Amended Stipulated Judgment is satisfied.

DATED: August , 2020

USAL PAINTING, LLC.

By: _____

Alexander Ernesto Navarro

DATED: August , 2020

ALEXANDER ERNESTO NAVARRO

By: _____

Alexander Ernesto Navarro, individual Defendant
and Guarantor, also dba Alexander Ernesto
Navarro

DATED: August , 2020

**DISTRICT COUNCIL 16 NORTHERN
CALIFORNIA HEALTH AND WELFARE
TRUST FUND, et al.**

By: _____

Robert Williams
Trustee of Plaintiff Trust Funds

DATED: August , 2020

**DISTRICT COUNCIL 16 NORTHERN
CALIFORNIA HEALTH AND WELFARE
TRUST FUND, et al.**

By: _____

Jeannie Simpelo
Trustee of Plaintiff Trust Funds

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the calendar in this matter is vacated, and that the Court shall retain jurisdiction over this matter.

DATED: August __, 2020

UNITED STATES DISTRICT JUDGE

24. The parties agree that the Court shall retain jurisdiction of this matter until this First Amended Stipulated Judgment is satisfied.

DATED: November , 2020

USAL PAINTING, LLC.

By: _____
Alexander Ernesto Navarro

DATED: November, 2020

ALEXANDER ERNESTO NAVARRO

By: _____
Alexander Ernesto Navarro, individual Defendant
and Guarantor, also dba Alexander Ernesto
Navarro

DATED: November ¹⁰, 2020

**DISTRICT COUNCIL 16 NORTHERN
CALIFORNIA HEALTH AND WELFARE
TRUST FUND, et al.**

By: 
Robert Williams
Trustee of Plaintiff Trust Funds

DATED: November ¹⁰, 2020

**DISTRICT COUNCIL 16 NORTHERN
CALIFORNIA HEALTH AND WELFARE
TRUST FUND, et al.**

By: 
Jeannie Simpelo
Trustee of Plaintiff Trust Funds

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the calendar in this matter is vacated, and that the Court shall retain jurisdiction over this matter.

DATED: November 12, 2020


UNITED STATES DISTRICT JUDGE